

The 29th November, 1994

No. 14/13/87-6Lab./943.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s E-in-Chief, Irrigation Department, Haryana, Chandigarh *versus* Shri Kartar Singh.

BEFORE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 674/90

Date of receipt : 25-7-89.

Date of decision : 2-11-94.

SHRI KARTAR SINGH S/O MAM CHAND, C/O SHAM SUNDER GUPTA,
LABOUR LAW ADVISOR, BHIWANI .. Applicant

versus

- (1) ENGG.-IN-CHIEF, IRRIGATION DEPARTMENT, HARYANA, CHANDIGARH.
- (2) EXECUTIVE ENGINEER, MOHINDERGARH CANAL, DIV. NO. 2,
CHARKHI DADRI (BHIWANI) .. Respondent Management

Present :

Shri S. S. Gupta, for the workman.

Shri Sita Ram, ADA, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (I) of section 10 of the Industrial Disputes Act, 1947 (for short "the Act"), the Governor of Haryana referred the following dispute between Kartar Singh and the above-mentioned management for adjudication to this Court,—*vide* Labour Department letter No. Bwn/130-89/29605—10, dated 11th July, 1989 :—

Whether termination of services of Shri Kartar Singh is justified and in order ? If not, to what relief is he entitled to ?

2. According to the workman, he was appointed as Diesel Engine Operator under the management in the year 1974 and posted at Charkhi Dadri. According to him, when on 20th September, 1976 he reported for duty, he was not allowed to join the same and was told orally that his services were not required. He also contended that when he persisted for a written order, a certificate was issued by the SDO of the respondent No. 2 to the effect that he had worked with respondent No. 2 from 4th December, 1975 to 19th September, 1976. The workman claimed that the termination of his services amounted to "retrenchment" and as the provisions of retrenchment were not complied with, the same was illegal. It was also stated that subsequently other persons were appointed, thus violating the provisions of Section 25-H of the Act.

3. The management, in its written statement, while admitting that the workman was deployed in between December, 1975 to January, 1976 in work charged capacity as per requirement of work, pleaded that he wilfully remained absent from duty most of the period and that the workman left the work at his own and did not come back for re-employment. It was also stated that services of the workman were no more required after completion of work. It was further pleaded that the workman kept silent for a long gap of 12 years.

4. On the pleadings of the parties, the following issues were framed on 18th July, 1992 by my learned predecessor :—

- (1) As per terms of reference.
- (2) Whether the claim is barred by time ?
- (3) Relief.

5. The parties led evidence in support of their rival claims. I have heard Shri S. S. Gupta, authorised representative of the workman and Shri Sita Ram, ADA on behalf of the management and have gone through the case file. My findings on the above issues are as under :—

Issue No. 1 :

6. According to Kartar Singh, he worked as T-Mate under the management since January, 1975 and he was removed from job in 1976 without issuing him any notice and without paying him any compensation.

7. On behalf of the management, Bhupinder Kumar, J. E. was examined as MW-1 and he deposed that the workman had worked from December 1975 to September, 1976 on purely work charged basis and during this period also, he did not attend to his duties continuously. He further stated that the workman left the job himself and that he had not completed 240 days job in any calendar year. In his cross-examination, he stated that the attendance record of the workman was old one and was yet to be traced. He admitted that he had not seen the attendance record of the workman before appearing in the witness box.

8. It is to be noted that the workman in the claim statement had admitted that he was removed from the job on 20th September, 1976. As against this, in the demand notice the date of retrenchment was mentioned as 19th September, 1986 and the demand notice was raised by the workman on 15th March, 1989. This wrong mentioning of date of termination in the demand notice does not appear to be typographic mistake and to my mind, it appears to be a clever device to get the reference made from the Government by suppressing the real date of termination.

9. Be that as it may be on account of long delay of about 12 years in raising the demand notice, the management had some justification in not producing the attendance record of the workman. It is to be noted that the workman in para 2 of the claim statement had stated that he was issued a certificate by the SDO, certifying that he had worked from 4th December, 1975 to 19th September, 1976, but the said certificate has been withheld by the workman for the reasons best known to him. It is also to be noted that no replication was filed by the workman controverting the plea raised by the management in para 5 of the written statement, on merits, to the effect that the workman remained absent from duty most of the period. Keeping these factors and the conduct of the workman in getting the reference made from the Government by suppressing the true facts, I hold that the workman had failed to prove that he had worked for 240 days during the preceding 12 months prior to September, 1976.

10. It is to be noted that the workman slept over the matter for over 12 years and he raised the demand notice for the first time on 15th March, 1989 and no explanation is forthcoming to justify this inordinate delay. The conduct of the workman in keeping mum for 12 long years, is a clear pointer to his abandonment of job in September, 1976 and once it is held to be a case of abandonment of service and not termination, there was no need to comply with the provisions of Section 25-F of the Act. The facts were almost similar in the authority reported as *Teja Singh v. Punjab Water Supply and Sewerage Board and Others*, 1994-FLR-146.

11. In the wake of above discussion, I hold that it was a case of abandonment of job by the workman and he is not entitled to any relief. The issue is answered against the workman.

Issue No. 2 :

12. Once the Government has referred a dispute to this Court for adjudication this Court is bound to decide the reference on merits and the reference can not be dismissed on the ground of limitation. This issue is, thus, answered accordingly, against the management.

Issue No. 3—Relief :

13. In view of my findings on the above issues, the workman had abandoned the job himself and he is not entitled to any relief. The reference is answered accordingly, with no order as to costs.

B. R. VOHRA,

The 2nd November, 1994.

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

Endorsement No. 2327, dated the 7th November, 1994.

A copy, with spare copy, is forwarded, to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.